Supreme Court, U. S.
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MAR 26 1973
MICHAEL RODAK, JR., CLERK

No. 72-1151

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

CITY OF SANTA FE, a municipal corporation and BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY, a political subdivision of the State of New Mexico,
Petitioners.

vs.

SANGRE DE CRISTO DEVELOPMENT COMPANY, INC., a New Mexico corporation,
Respondent.

REPLY BRIEF TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE STATE OF NEW MEXICO

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March 22, 1973

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STATEMENT

The Petition in this case was filed with this Court on February 20, 1973. Respondent filed its Brief in Opposition on or about March 19, 1973. In the Brief in Opposition Respondent argues under its fourth point that the case of *Norvell v. Sangre de Cristo Development Company, Inc.*, presently pending in the Federal District Court for the District of New Mexico "will provide a better decision for this Court to review on appeal or

certiorari". This is an argument first raised in the Brief in Opposition which Petitioners are responding to here pursuant to paragraph 4 of Rule 24 of this Court.

ARGUMENT

Two weeks prior to the filing of Respondent's Brief in Opposition, Judge Howard C. Bratton, the presiding judge in the case of *Norvell v. Sangre de Cristo Development Company, Inc.*, D.C.N.M., No. 9106, wrote a letter to all counsel of record vacating a March 26, 1973 trial setting in the case and stating:[1]

> "In the present posture of matters a number of the issues in the cause might be considered as calling for an advisory opinion. It is my judgment that it would be appropriate to vacate the present trial setting."

In view of Judge Bratton's action Petitioners fail to see how Respondent could argue to this Court that the *Norvell* case will provide a better decision for this Court to review on appeal or certiorari – assuming the issues presented in the *Norvell* case include the question presented in this case. The *Norvell* case may never be decided and, even if it is, Respondent has no substantial basis for the statement in its Brief in Opposition that the "judgment of the District Court [in the *Norvell* case] will inevitably be reviewed by this Court". This statement assumes an appeal to the Tenth Circuit followed by an appeal to, or a grant of certiorari by, this Court. Even if all of these assumed events took place in the *Norvell* case, they would take a year or two to happen. In the meantime, the important question presented by this case would go unresolved if the argument of Respondent were followed.

Furthermore, the *Norvell* case does not involve the New Mexico provisions, Sections 14-19-1 through 14-19-14, N.M.S.A., 1953 Comp., which Petitioners rely on in this case as their primary basis for claiming planning and platting authority and

1. The Judge's letter is reproduced in full in Appendix A hereto. Counsel for Respondent in this case is also a counsel of record in the *Norvell* case.

subdivision control over the leasehold interest of Respondent and which provide the only basis for the claim of Petitioner City of Santa Fe. The only New Mexico provisions involved in both cases are Sections 70-3-1 through 70-3-9, N.M.S.A., 1953 Comp. (1971 Supp.) which purport to give counties certain platting authority.

Finally, if the Petition were denied in this case, it would become a final judgment which might prevent Petitioner Santa Fe County, a party plaintiff in the *Norvell* case, from claiming jurisdiction in the *Norvell* case over the leasehold interest of Respondent under Sections 70-3-1 through 70-3-9, N.M.S.A., 1953 Comp. In such event the issue would never be decided in the *Norvell* case and therefore never reviewed by a federal appellate court.

Accordingly, Petitioners submit that the pendency of the *Norvell* case, instead of providing a reason for denying the Petition, demonstrates the need for granting the Petition.

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Board of County Commissioners

APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
ALBUQUERQUE, NEW MEXICO 87103

HOWARD C. BRATTON
JUDGE

March 5, 1973

Re: David L. Norvell, Attorney General of the State of New Mexico –vs– Sangre De Cristo Development Company, Inc., a New Mexico corporation, et al. No. 9106 Civil

TO ALL COUNSEL IN THE ABOVE CAPTIONED CASE:

Gentlemen:

I have reconsidered the issue as to whether it would be advisable to proceed to a final hearing in the above cause at this time.

In the present posture of matters a number of the issues in the cause might be considered as calling for an advisory opinion. It is my judgment that it would be appropriate to vacate the present trial setting.

The trial setting of March 26, 1973 will be vacated. The matter will be reconsidered and your views solicited by June 1 as to the time of further proceedings in this action.

Very truly yours,

s/ Howard Bratton

Howard Bratton